



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2018-0119]

RIN 1625-AA00

Safety Zone: St. Francis Yacht Club Fireworks, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving safety zone in the navigable waters of the San Francisco Bay near St. Francis Yacht Club in support of the St. Francis Yacht Club Fireworks Display on March 5, 2018. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective from 8 a.m. to 10:30 p.m. on March 5, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0119 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399-7443 or e-mail at D11-PF-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

APA	Administrative Procedure Act
COTP	U.S. Coast Guard Captain on the Port
DHS	Department of Homeland Security
FR	Federal Register
NOAA	National Oceanic and Atmospheric Administration
NPRM	Notice of Proposed Rulemaking
PATCOM	U.S. Coast Guard Patrol Commander
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Since the Coast Guard received notice of this event on February 9, 2018, notice and comment procedures would be impracticable in this instance.

For similar reasons as those stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the planned fireworks display on March 5, 2018, will be a safety concern for anyone within a 100-foot radius of the fireworks barge and anyone within a 560-foot radius of the fireworks firing site. This rule

is needed to protect spectators, vessels, and other property from hazards associated with pyrotechnics.

IV. Discussion of the Rule

This rule establishes a temporary safety zone during the loading and transit of the fireworks barge, until after completion of the fireworks display. During the loading of the pyrotechnics onto the fireworks barge, scheduled to take place from 8:00 a.m. to 1:00 p.m. on March 5, 2018, at Pier 50 in San Francisco, CA, the safety zone will encompass the navigable waters around and under the fireworks barge within a radius of 100 feet.

The fireworks barge will remain at Pier 50 until the start of its transit to the display location. Towing of the barge from Pier 50 to the display location is scheduled to take place from 6:00 p.m. to 6:30 p.m. on March 5, 2018, where it will remain until the conclusion of the fireworks display.

At 9:10 p.m. on March 5, 2018, 30 minutes prior to the commencement of the 18-minute fireworks display, the safety zone will increase in size and encompass the navigable water around and under the fireworks barge within a radius of 560 feet in approximate position 37° 48'37"N, 122° 26'49"W (NAD 83) for the St. Francis Yacht Club Fireworks Display. The safety zone shall terminate at 10:30 p.m. on March 5, 2018.

The effect of the temporary safety zone is to restrict navigation in the vicinity of the fireworks loading, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing sites to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O.13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. This regulatory action determination is based on the size, location, duration of the safety zone. The size of the zone is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. This zone is of limited duration and is the minimum necessary to provide adequate protection for the waterways users, adjoining areas, and the public. The Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires

federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. § 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded from further review under paragraph L60(c) of Section L of the Department of Homeland Security Instruction Manual 023-01-001-01 (series). An environmental analysis checklist supporting this determination and Record of Environmental Consideration (REC) are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;
Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T11-916 to read as follows:

§ 165.T11-916 Safety Zone; St. Francis Yacht Club Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) Location. The following area is a safety zone: All navigable waters of the San Francisco Bay within 100 feet of the fireworks barge during loading at Pier 50, as well as transit to and arrival at St. Francis Yacht Club. The safety zone will expand to all navigable waters around and under the fireworks barge within a radius of 560 feet in approximate position 37° 48'37"N, 122° 26'49"W (NAD 83) 30 minutes prior to the start of the 18 minute fireworks display, scheduled to begin at 9:40 p.m. on March 5.

(b) Enforcement period. The zone described in paragraph (a) of this section will be enforced from 8 a.m. until approximately 10:30 p.m. March 5, 2018. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners.

(c) Definitions. As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) Regulations. (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF-23A or through the 24-hour Command Center at telephone (415) 399-3547.

Dated: February 23, 2018

Patrick S. Nelson
Captain, U.S. Coast Guard
Alternate Captain of the Port, San Francisco

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